

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

FILE

SEP 3 2003

OFFICE OF  
MANAGING DIRECTOR

Christopher D. Imlay, Esq.  
Booth, Freret, Imlay & Tepper, P.C.  
7900 Wisconsin Ave.  
Suite 304  
Bethesda, MD 20814-3628

Re: Emergency Request for Waiver of Filing Fees  
for Certain Broadcast Auxiliary Modification  
Applications Submitted on FCC Form 601  
Fee Control No. 00000RROG-03-086

Dear Mr. Imlay:

This letter responds to your request (dated June 2, 2003) submitted by the Society of Broadcast Engineers, Incorporated (SBE) on behalf of its members, for a waiver of the "requirement of tendering filing fees with certain Part 74 Modification applications filed on FCC Form 601." Specifically, SBE requests a waiver of the application fees associated with Broadcast Auxiliary Service (BAS) licenses to provide information missing from the Commission's licensing database (i.e., the Universal Licensing System (ULS)) regarding that license, including missing receive site and azimuth database information. Although SBE states that filing fees would still be required for applications "to correct erroneous information, or to otherwise modify an existing . . . [BAS] license[.]" SBE somewhat inconsistently also requests "consideration" of a "limited-time" waiver of the fees associated with "modification applications which only correct erroneous data in the ULS for fixed Part 74 incumbent licenses "

On October 30, 2002, the Commission adopted prior coordination procedures for fixed point-to-point Aural Broadcast Auxiliary Service (BAS) stations above 944 MHz and fixed point-to-point Television BAS (TV BAS) stations above 2110 MHz under Part 74 of the Commission's rules.<sup>1</sup> The Commission adopted these procedures to conform procedures for fixed BAS and CARS stations under Part 78, with those already in effect

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<sup>1</sup> See *Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules*, 17 FCC Rcd 22979, 23001-06 at paras. 53-65 and App. A: Final Rules at §§ 74.502(d) and 74.638 (2002) (*Report and Order*). The new procedures generally require parties to coordinate their planned spectrum use with potentially affected parties prior to filing a license application. The *Report and Order* also adopted the prior coordination requirement for fixed stations in the Cable Television Relay Service (CARS) under Part 78. See *Report and Order* at App. A: Final Rules at § 78.36.

for Fixed Microwave Services (FS) under Part 101, section 101.103(d) of the Commission's rules. The Commission found that the FS procedures were appropriate for fixed BAS and CARS stations, stating that uniform procedures for bands shared among these services are necessary to promote spectrum efficiency and to minimize the possibility of harmful interference.<sup>2</sup>

On April 15, 2003, the Commission's Office of Engineering and Technology granted in part a Request for Temporary Stay filed by SBE to delay the effective date of the prior coordination procedures adopted in the *Report and Order* until October 16, 2003.<sup>3</sup> OET granted the temporary stay to allow BAS licensees time to provide and to correct BAS receive site information in the ULS database, so as to ensure that the new procedures effectively avert interference to existing systems.<sup>4</sup> In granting the stay, OET agreed with SBE that inaccuracies in the ULS could seriously affect the efficacy of prior coordination procedures, which was not anticipated by the Commission when it adopted these procedures in the *Report and Order*.<sup>5</sup>

In the instant waiver request, SBE states that the prior coordination procedures adopted in the *Report and Order* require a more accurate database than that needed under the informal coordination procedures currently in effect. SBE asserts that the new prior coordination procedures presume "valid and current" data in the ULS database which "is lacking for a substantial number of BAS records." SBE states that the information missing from and the inaccuracies in the ULS database are a legacy of previous licensing schemes. SBE maintains that it would be "unfair to subject" BAS licensees to an inaccurate and incomplete database when incumbent licensees have "provided all information required at all relevant times to keep their license information up to date, but simply weren't required to provide certain information now critical." SBE maintains that it would be "unfair" to new BAS applicants who complete the prior coordination procedures and application process only to find that existing receive sites that were not in the ULS database may suffer harmful interference from the new facilities.

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<sup>2</sup> See *Report and Order* at paras. 2, 53, and 61. Because these procedures were already in effect for Aural and TV BAS stations in the bands 6425-6525 MHz and 17700-19700 MHz, the new rules only affect fixed BAS in the bands 944-952 MHz (950 MHz), 2450-2583.5 MHz (2.5 GHz), 6875-7125 MHz (7 GHz), and 12700-13250 MHz (13 GHz).

<sup>3</sup> *Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78 and 101 of the Commission's Rules, Order*, 18 FCC Rcd 7032 (OET 2003) (*Stay Order*). As originally adopted in the *Report and Order*, the Commission ordered the prior coordination rules to become effective 30 days after their publication in the Federal Register, which publication occurred on March 17, 2003. See 68 FR 12743 (Mar. 17, 2003).

<sup>4</sup> *Stay Order* at 7033.

<sup>5</sup> *Id.*

The Commission has discretion to waive filing fees upon a showing of good cause and a finding that the public interest will be served thereby. See 47 U.S.C. §158(d)(2); 47 C.F.R. §1.1117(a); *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985*, 5 FCC Rcd 3558, 3572-73 (1990). Section 1.1117(b) of the Commission's rules expressly provides that the Commission will consider requests for waivers of filing fees "only . . . when received from applicants acting in respect to their own applications. Requests for waivers . . . of entire classes of services will not be considered." SBE, "the national association of broadcast engineers and technical communications professionals, with more than 5,000 members world wide,"<sup>6</sup> filed the instant request for waiver of the application fees "in the interests of its members nationally[.]" The Commission's waiver process is conducted on a case-by-case basis. Because SBE requests waiver of the application filing fees on behalf of its membership generally, and the Commission may only consider waiver requests filed by individual applicants pertaining to their own applications, we dismiss SBE's request for relief under section 1.1117(b).

Even assuming that SBE's request for waiver were not properly subject to dismissal under section 1.1117(b), SBE has failed to establish good cause for waiver of the application fees. We construe our waiver authority under section 8 of the Communications Act, 47 U.S.C. §158(d)(2), narrowly and will grant waivers on a case-by-case basis to specific applicants upon a showing of "extraordinary and compelling circumstances." See *Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, Report and Order*, 2 FCC Rcd 947, 958, para. 70 (1987); *Sirius Satellite Radio Inc.*, FCC 03-135, 2003 WL 21402609, para. 11 (released: June 19, 2003). The fact that the Commission adopted prior coordination procedures that will require a more accurate database is not in and of itself a sufficiently compelling justification for waiver of the application filing fees. Furthermore, SBE's assertion that it would be unfair to subject licensees and applicants for licenses to an inaccurate and incomplete database provides no grounds for waiver of the application filing fees. In this regard, we note that the *Stay Order*, as discussed above, has already largely addressed this concern by in effect providing licensees a six-month extension of time until October 16, 2003 to correct erroneous data in and to provide information missing from the ULS database. Moreover, SBE's request is unclear as to whether or not it seeks a waiver to correct erroneous data in the ULS database (as well as to provide information missing from the database) and, if so, to what extent. In these circumstances, we perceive no reason to grant a blanket fee waiver. We therefore find that you have neither demonstrated that the purported interests of SBE's members in not paying the application fees would be in the public interest nor otherwise established that the public interest would be served by a grant of your request. We accordingly deny SBE's request for waiver of the application filing fees.

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<sup>6</sup> See SBE Request for Temporary Stay of the PCN Requirement, Revision of the Broadcast Auxiliary Service, ET Docket No. 01-75, Digital Modulation for all TV BAS Bands, RM-9418, Low-Power Video Assist Devices, RM-9856 at 1 (dated Apr. 4, 2003).

Christopher D Imlay, Esq.

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If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger". The signature is fluid and cursive, with a large initial "M" and a stylized "R".

 Mark A. Reger  
Chief Financial Officer

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June 2, 2003

Via Facsimile and Courier Delivery  
202.418.1919

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6/13

Re: Emergency Request for Waiver of Filing Fees for  
Certain Broadcast Auxiliary Modification Applications  
Submitted on FCC Form 601.

Dear Mr. Fishel and Ms Licht:

This is an emergency request for waiver of the requirement of tendering filing fees with certain Part 74 Modification applications filed on FCC Form 601. Specifically, the Society of Broadcast Engineers, Incorporated (SBE), in the interests of its members nationally, respectfully requests that the Commission permit Part 74 licensees to modify their existing Part 74 Broadcast Auxiliary licenses without tendering a fee therefor, to the extent that the modification applications provide information missing from the Commission's database. A filing fee would continue to be necessary for an application filed in order to correct erroneous information, or to otherwise modify an existing Broadcast Auxiliary license. However, information not in the database could be provided by licensees without requiring a fee therefor. As good cause for this waiver request, the following is submitted.

In ET Docket No. 01-75, the Commission released a *Report and Order*, FCC 02-298, on November 13, 2002 (the R&O). That docket proceeding revised the Part 74 Broadcast Auxiliary Service (BAS) rules to update them and to permit more efficient technologies to be deployed in that Service. Among many other things, the R&O created a specific, mandatory frequency coordination system prior to licensing of new or modified BAS facilities applicable to most fixed point-to-point Aural and TV BAS facilities. The new prior coordination procedures were modeled after the existing Part 101 procedures used for fixed microwave paths. The procedures involve both standard coordination processes and a prior notification procedure for co-channel and adjacent channel licensees in nearby geographic areas. This process presumes a valid and current database which would be used by the Part 74 coordinators. Although a reasonably complete database now exists for Part 101 facilities, this is not the case for Part 74 facilities, as was documented in the April 4, 2003 SBE Request for Temporary Stay of the prior coordination notice requirement. A mandatory PCN protocol presumes the existence of certain data in the ULS for Part 74 fixed point-to-point microwave stations, and such data is lacking for a substantial number of BAS records.

This is due to a number of historic factors. Principal among these is the fact that the old FCC form 313, used for many years, did not require information such as receive site coordinates, for example. Therefore, the database now does not include such information for a significant percentage of existing stations. While the new FCC Form 601 solves most of the missing information problem, the database is corrupted by both inaccurate and missing information. While the Commission staff has on recent occasion called for correction of database information by licensees, some information required to accurately conduct the new prior notification procedures and updated coordination processes is simply missing. It is simple to argue that it would be unfair to subject BAS licensees to an inaccurate and incomplete database, and therefore failed prior coordination efforts for new facilities, since incumbent licensees have had existing fixed studio-to-transmitter links and other BAS fixed facilities in place for many years and provided all information required at all relevant times to keep their license information up to date, but simply weren't required to provide certain information now critical. It is also unfair to new applicants who go through the process of applying for a new fixed BAS facility, only to find that there are receive sites which will suffer harmful interference because they were not in the database.

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Another contributing factor here was the disconnect between broadcast licensing and BAS licensing processes over a long period of time. The database does not properly associate BAS licenses to the proper licensees. Those problems have been solved, but there is still extensive corruption in the database, consisting of erroneous, rather than missing, information.

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After the release of the ET Docket 01-75 R&O, the Commission entertained an SBE Request for Temporary Stay of the effective date of the new prior coordination procedures for fixed BAS facilities. SBE asked for additional time to allow BAS licensees to provide and correct BAS receive site information in the licensing database (ULS) to ensure that the new procedures effectively avert interference to existing systems. The Commission granted this stay for a period of six months, on April 15, 2003. The stay terminates October 16, 2003, unless otherwise extended.

SBE representatives met with Commission Wireless Telecommunications Bureau, Media Bureau, and Office of Engineering and Technology staff following the issuance of the stay, to determine the best way to fix the errors in the ULS BAS database, so that the prior coordination procedures could be made to work. Initially, SBE requested that the Commission permit, during a window period, non-feeable 601 applications to provide missing database information, including path azimuth and receive site information, and to correct errors in the database. The Commission staff, quite reasonably, did not want to simply allow any modifications to be filed, as such a process would be subject to abuse, and the process would require a large amount of WTB staff time to review each application separately to insure that the process was not abused.

What was ultimately determined to be feasible, instead, was to require that BAS modifications be filed and processed in the normal manner, but that Form 601 modification applications filed for the purpose of providing missing information would not be subject to application fees. The fairness issue aside, the basic justification would be to provide licensees an incentive to provide receive site information not now in the database. The missing information is, as the Commission notes in the *Order*, DA 03-1141, released April 15, 2003, a legacy of pre-ULS licensing procedures which did not call for the missing information to be provided. The Commission agreed with SBE about this, and noted that "legacy database inaccuracies in the ULS could seriously affect the efficacy of prior coordination procedures, which was not anticipated when the *Order* setting these procedures was adopted." Thus, the Commission adopted an appropriate balance between the need for an accurate database to make the process work and the desire to implement quickly the benefits it believes are provided by the prior coordination procedure for fixed BAS facilities.

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Therefore, given the foregoing, SBE respectfully requests that the Commission waive application filing fees for the class of modification applications in which an incumbent BAS licensee submits FCC form 601, seeking to modify its license only insofar as it provides missing database information regarding that facility. The Wireless Bureau has indicated that it might be possible to create any necessary fields not now in the Form 601 for electronic filing of these applications to provide the opportunity to submit missing receive site, azimuth, and other missing data.

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While SBE understands the difficulty in allowing non-fee modification applications for erroneous data in the ULS regarding Part 74 fixed BAS facilities, there remains a large number of inaccuracies in the database, also legacy-based. Therefore, it is also requested that the Commission also give serious consideration to at least a limited-time waiver of filing fees for modification applications which only correct erroneous data in the ULS for fixed Part 74 incumbent licenses. Correction of the database as to parent station information has already been permitted, so ownership information regarding the parent station would not be in the category of non-feeable modification applications.

Due to the limited duration of the Docket 01-75 Stay Order, this waiver request is being styled as an emergency waiver request. SBE requests that the Commission act on this request at the earliest possible time. Any questions regarding this should be addressed to the undersigned counsel.

Yours very truly,

*Christopher D. Imlay*

Christopher D. Imlay  
SBE General Counsel

by ARD

Cc: Ted Ryder, FCC  
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